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**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

FILE: B-192151

DATE: September 13, 1978

MATTER OF: Isometrics, Inc.

**DIGEST:**

1. Notwithstanding whether two evaluation clauses in IFB canceled after bid opening were ambiguous, under terms of initial IFB there would be no prejudice to competition if award was made to bidder pursuant to its "all or none" bid. Therefore, canceled IFB should be reinstated and award made thereunder.
2. Where canceled IFB is reinstated, issues raised by protest against subsequent IFB, which was readvertisement of initial IFB, are rendered academic and will not be considered.

Isometrics, Inc. (Isometrics), has protested the cancellation of invitation for bids (IFB) No. DAAE07-78-B-5456 (78-B-5456) issued by the United States Army Tank-Automotive Materiel Readiness Command (Army) for "Truck, Tank, Gasoline, 2,000 Gallon Capacity, Gasoline Engine Driven, 28,000 Pound Gross Vehicle Weight, 4x2, Axle Configuration - 21 each."

Section "C" of the IFB, "INSTRUCTIONS, CONDITIONS, AND NOTICE TO OFFERORS," advised that the two clauses, which follow, were applicable to the instant procurement:

**"C-13 Separate Contract Awards - TARCOM**

"Notwithstanding paragraph 10(c) of SF 33A or any other provision hereunder, the Government expressly reserves the right to make separate awards for any individual destination specified under all items. Offerors desiring to do so may submit alternate prices as follows: (a) a price based on separate award of the quantity for

each destination; (b) a price based on 'all or none' award or such lesser or minimum quantity as desired.

"C-14 ALL OR NONE - ASPR 2-201(a) § C(iv);  
3-501(b)(3) § C(v)

"Notwithstanding the language of paragraph 10(c) of SF 33A offers must be submitted for the total quantity of the items advertised. ONLY ONE AWARD WILL BE MADE AS A RESULT OF THIS SOLICITATION. OFFERS SUBMITTED FOR LESS THAN THE TOTAL QUANTITIES OF ALL THE ITEMS ADVERTISED WILL BE DEEMED NONRESPONSIVE."

The Army received bids from five bidders, three submitting "all or none" bids, while the remaining two included no such restriction. Isometrics was the low bidder with respect to the "all or none" bids and the apparent low bidder on an individual basis. However, there was some indication that the type of transportation evaluation, whether on an "all or none" or item-by-item basis, could affect Isometrics' low overall bidder position as to some items with freight costs based on F.O.B. origin. Therefore, evaluations were conducted to determine whether or not Isometrics on an individual basis was the low overall bidder. The result was that the bid submitted by PSI Mobile Products Inc. (PSI), which did not contain an "all or none" restriction, was lower on four of the items with freight costs based on F.O.B. origin. The Army's view at this point was that "The ambiguity between IFB Clauses C13 and C14 could not be resolved on the basis of Isometrics being low bidder on all individual [items]." Consequently, the contracting officer issued a Determination and Finding in which he concluded that the IFB was ambiguous since the Government's intent as to bid evaluation could not be readily discerned by potential bidders and the bidder's intent ("all or none" v. "separate" awards) could not be readily discerned by the Government. Then IFB 78-B-5456 was canceled pursuant to Armed Services Procurement Regulation § 2-404.1(b)(viii) (1976 ed.), which states in pertinent part:

"(b) \* \* \* Invitations for bids may be canceled after opening but prior to award when such action is consistent with (a) above ['preservation of the integrity of the competitive bid system'] and the contracting officer determines in writing that--

\* \* \* \* \*

"(viii) for other reasons, cancellation is clearly in the best interest of the Government."

A second protest was filed by Isometrics on July 24, 1978, concerning the issuance of IFB No. DAAE07-78-B-5874 (78-B-5874), which is the readvertisement of the canceled IFB, 78-B-5456. Isometrics requests that bid opening of IFB 78-B-5874 be postponed until our decision concerning the cancellation of IFB 78-B-5456 is issued. The Army has advised our Office that the solicitation will remain "on the street," and the bid opening date will be extended, as called for, pending our decision.

Isometrics sets forth its position, with respect to IFB 78-B-5456, as follows:

"The Army has failed to demonstrate that any of the bidders have been prejudiced by an ambiguity allegedly created by use of these two IFB provisions and that the Government will not receive the lowest price in any event. Accordingly, there is no legally supportable theory under which the Army can justify cancellation.

"The Abstract of Bids discloses that three of the five bidders submitted their bids on the basis of 'all or none.' Therefore, the intentions of these three bidders are plainly expressed with no room for doubt. Isometrics was the lowest responsive bidder of the three 'all or none' bidders with a price of \$525,240.00. The two other bidders made no statement as to 'all or none': Eastern Tank of Peabody, Inc. and PSI Mobile Products, Inc. To the extent that there is any doubt

regarding the intentions of the bidders, only these two bidders can be regarded as failing to explicitly state their intentions.

"In order for the government to justify cancellation they must demonstrate that Eastern Tank and PSI have been prejudiced by the alleged ambiguity. Such a showing requires that Eastern Tank and PSI can be construed as low bidder under either: (1) 'all or none' bid or (2) a separate award bid. Neither Eastern Tank nor PSI can make such a claim. The Abstract of Bids shows that upon an all or none basis neither Eastern Tank nor PSI would be the low bidder. Upon a separate award basis, awards could be made only to these two bidders since the other three bidders were all or none. Thus upon separate awards the Abstract of Bids shows that the prices would be: PSI - \$215,812.11; Eastern Tank - \$318,116.87; total awards - \$533,928.98. A total award price of \$533,928.98 based on separate awards is still higher than the all or none price of \$525,240.00 submitted by Isometrics. Therefore, regardless of the basis upon which PSI and Eastern Tank were bidding, neither company would be the lowest bidder." (Emphasis supplied by Isometrics.)

Ordinarily, this Office will not question the contracting officer's broad authority to reject all bids and readvertise when a "compelling" reason to do so exists. Spickard Enterprises, Inc., et al., 54 Comp. Gen. 145 (1974), 74-2 CPD 121. However, we have held that even the use of an inadequate, ambiguous or otherwise deficient specification is not, in and of itself, a "compelling" reason to cancel an IFB and readvertise where an award under the solicitation as issued would serve the actual needs of the Government and would not prejudice the other bidders. GAF Corporation, et al., 53 Comp. Gen. 586 (1974),

74-1 CPD 68. Accordingly, in order to determine whether cancellation of IFB 78-B-5456 on the basis that the ambiguous IFB clauses contemplated different methods of award, and therefore contrasting methods of bidding, was proper, we need not decide whether or not such clauses are in fact ambiguous.

The primary issue before us is whether the competition will be adversely affected (prejudiced) by an award utilizing either the "all or none" or "separate" IFB clause. See Tennessee Valley Service Company, B-188771, July 20, 1977, 77-2 CPD 40, and Square Deal Trucking Co., Inc., B-183695, October 2, 1975, 75-2 CPD 206.

. It is our opinion that there would be no prejudice to the competition if an award to Isometrics based on its "all or none" bid was made, since the IFB permitted bids on that basis. In addition, we note that the Isometrics' bid evaluated to destination is lower than the combination of the PSI and Eastern Tank separate bids evaluated to destination. Thus, there was in fact no need to cancel IFB 78-B-5456 and essentially create an auction situation by resoliciting for the requirements.

In view of the above, we consider that IFB 78-B-5456 was erroneously canceled, and that no cogent or compelling reason exists to allow the cancellation to stand. Our Office has sanctioned the reinstatement of a canceled invitation in the past when to do so would work no prejudice on the right of others and would, in fact, promote the integrity of the public bidding system. 39 Comp. Gen. 634 (1960). The circumstances of this procurement appear to lend themselves to such a reinstatement. See Burley Machinery, Inc., 55 Comp. Gen. 592 (1975), 75-2 CPD 411; Joy Manufacturing Company, 54 Comp. Gen. 237 (1974), 74-2 CPD 183; Spickard Enterprises, Inc., et al., supra.

Accordingly, the protest of Isometrics is sustained. Award should be made to that firm under the initial solicitation, if otherwise proper. In view thereof, the

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issues raised by Isometrics' second protest, set forth above, are rendered academic and will not be considered.

*Thurston J. Fowler*

Acting Comptroller General  
of the United States